IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Gulab Chand
Vs.
Mangtu Ram & Ors.

S.B. CIVIL WRIT PETITION NO.6164/2007.

Date of Order : 17/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Rakesh Kumar for the petitioner.
Shri L.L. Gupta for respondent No.1.
Shri Hemdnra Goyal and
Shri Atish Jain for the respondents.

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BY THE COURT:-

Heard learned counsel for the parties.

2) The petitioner has challenged the order passed by the Election Tribunal dated 7/8/2007 directing the Election Officer (Panchayat) Alwar and Returning Officer (Panchayat), respondents No.3 and 4, respectively to hold election of Sarpanch afresh.

3) The dispute pertains to the election to the office of Sarpanch Gram Panchayat Tighariya, Panchayat Samiti, Kathumar (Alwar) held on

31/1/2005. In that election, petitioner as well as respondent No.1 were candidates. Petitioner was declared elected having secured 613 votes by difference of 21 votes. He therefore filed an election petition on the ground that petitioner was disqualified to contest the election in view of Section 19(gg) of the Rajasthan Panchayati Raj Act, 1994 (for short, “Act of 1994”) because he was facing trial in criminal case for offences under Sections 147, 148, 323, 324, 354 and 149 IPC and charge-sheet for offences under Sections 354 and 323 IPC was filed against him and he was sentenced to three years simple imprisonment. The election Tribunal found that fact proved under Issue No.3A, set-aside the election of the petitioner and directed the District Election Officer Alwar to hold fresh election.

4) Shri Rakesh Meena, learned counsel for the petitioner argued that since respondent No.1 himself was facing criminal trial of the offences which too were punishable by imprisonment of five years and therefore he was also disqualified to

contest the election in view of Section 19(gg) of the Act of 1994. He could not be therefore treated as a candidate in the meaning of Rule 81 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (for short, “Rules of 1994”) which inter-alia provides that “the petition under Rule 80 Rules could only be presented by any candidate and person filing election petition himself who is not disqualified in any manner.” Learned counsel argued that from the language of the rule as used therein, if plainly and simply interpreted, any candidate is to be interpreted to mean a candidate who is eligible to contest the election. Since respondent No.1 who filed election petition was not eligible to contest election, filing of election petition by him was competent and election of the petitioner could not be annulled on the basis of such an incompetent petition.

5) I am afraid, this interpretation simply cannot be placed on the language as used in Rule 81. A candidate who has actually contested the election, his nomination papers having been rejected at the time of scrutiny, cannot be denied the right to file election petition. It is a fact that respondent No.1 contested the election. In the result, petitioner secured more votes than secured by respondent No.1, resultantly petitioner was declared elected whereas respondent No.1 defeated. Therefore, it cannot be accepted that respondent No.1 was not a candidate in the election petition.

6) It was further argued that in view of Rule 83 of the Rules of 1994 contesting respondent No.1, apart from praying that election of the petitioner be set-aside, also made a prayer that he be declared elected. In that view of the matter, as per the mandate of Rule 83, he was required to have impleaded, every unsuccessful candidate as party.

7) On consideration of this argument, I find

that Rule 83 requires that when prayer of recrimination is made by a candidate who has filed election petition, it is incumbent upon him to implead every such unsuccessful candidate as a party thereto who has secured more votes than him. Finding recorded on Issue No.4 by the Election Tribunal thus does not suffer from perversity because in the present case indisputably, there was no other candidate who has secured more votes than the contesting respondent herein and, therefore, non-impleadment of other unsuccessful candidate would not make any difference.

8) Lastly, the third argument that has been made by the learned for the petitioner is that the election tribunal could not direct the State Election Commission to hold election in a time bound manner. In support of his argument learned counsel for the petitioner has placed reliance on the judgment of Division Bench of this court in DB Civil Special Appeal (Writ) No.211/2007 : Pushpa Ghoshi Vs. State and ors.

wherein the Division Bench while dealing with the case held that “the direction given by the Single Judge to the State Election Commission, in our considered view, is not in conformity with the constitutional provisions and the legal position propounded by the Supreme Court.”

9) In the facts of the case, I find that the Election Tribunal should have confined itself to examining validity of election and having set-aside the election, it should not have further directed the District Election Officer Alwar to hold the election afresh.

In view of what has been discussed above, the writ petition is partly allowed. The judgment of the Election Tribunal dated 7/8/2007 to the extent of directing the respondents No.3 and 4 to hold fresh election is set-aside but upheld on other aspects. There shall be however no order as to costs.

(MOHAMMAD RAFIQ), J.

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